

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing Nos. 15,809
)	& 15,858
Appeal of)	
)	

INTRODUCTION

The petitioner appeals the Department of Social Welfare's denial of her request to restore Food Stamp benefits to which she believes she was entitled for a past period.

FINDINGS OF FACT

1. The petitioner is a disabled woman who received both Food Stamps and fuel assistance during the 1998-1999 heating season. She did not receive any Food Stamps from the period January 1, 1998 through October 1, 1998, because her eligibility during that period depended upon her receipt of fuel assistance during the 1997-1998 heating season. She did not apply for fuel benefits during that year.

2. The petitioner claims that she did not apply for fuel assistance during the 1997-1998 fuel season because she was told by her food stamp eligibility worker that she would not be eligible for such benefits. As a result of her failure to receive fuel benefits, she was not found eligible for Food Stamp benefits. When the petitioner found out that she could have received fuel assistance if she had applied, she made a written claim with the Department for back food stamp benefits claiming agency error. The claim, which

involved about \$600 worth of food stamps, was filed on December 31, 1998. The Department, while conceding that the petitioner would have been eligible for fuel benefits had she applied and that she would have then received more Food Stamp benefits, denied her claim because its investigation did not reveal any agency error causing her failure to apply.

3. The testimony offered at hearing by the petitioner was that she applied for Food Stamps on April 23, 1997. Her application was reviewed with her by telephone by her eligibility worker who has handled the petitioner's case for four or five years but whom she has never met face to face.

(Persons with disabilities are not required to come into the office for eligibility interviews.) The petitioner recalls that during the Food Stamp interview she asked if she could get fuel assistance and was told "no" by the worker because her fuel was included in her rent. The petitioner says that she relied on that information and did not apply for fuel assistance. She recalls nothing else and no other details about the review conversation. She admits that she often has difficulty hearing on the telephone, especially when there are other people in the room.

4. The petitioner's failure to apply impacted negatively upon her Food Stamp benefits during that year. When she reapplied in April of 1998 and was again interviewed by telephone, the same eligibility worker

indicated concerned about the low amount of Food Stamps she received (\$10 per month), and suggested to her that she should apply for fuel assistance. The petitioner made such an application, was found eligible, and her Food Stamp benefits were increased from \$10 per month to \$75 per month.

When she discovered that she would have been eligible for fuel assistance if she had applied the year before, the petitioner filed the above-described claim with the Department.

5. The eligibility specialist does not have any specific recollection of the phone conversation she had with the petitioner on April 23, 1997, because of the amount of time which has passed and because she has 175-180 open cases at any given time. She referred to her notes on the Food Stamp application to answer specific questions about this interview. The notes show that the petitioner reported on the application that her rent included her heat and utilities and that she received a Section 8 certificate, information that the specialist confirmed during the phone interview. The eligibility worker agrees that she must have talked with the petitioner about applying for fuel since it was her usual procedure to advise clients of the fuel application deadlines and how they could apply for that program because she is well aware that fuel receipt can impact upon Food Stamp eligibility. The worker says it is possible that she and the petitioner discussed the fact that

persons with heat included in their rent might be limited to a \$10 fuel payment. She does deny, however, that she ever told the petitioner not to apply for fuel assistance in 1997, because such a statement would have been counter to her regular practice of always encouraging, rather than discouraging, clients to apply for benefits and her own lack of knowledge of the eligibility requirements for the fuel program which is handled by a centralized office (the Office of Home Heating Fuel Assistance) in Waterbury.

6. In June of 1997, the Department mailed the following notice to all current Food Stamp recipients:

ATTENTION FOOD STAMP RECIPIENTS

If you pay rent and heat is included in your rent or you pay room rent, you must apply each year to get a \$10.00 Fuel Assistance benefit to not lose any of your Food Stamp benefits. If you do not apply for or are found not eligible for this \$10.00 Fuel benefit, your Food Stamp benefits may decrease. The Fuel Assistance application period is July 15 through September 2.

7. Based on the above evidence it is concluded that the petitioner did not apply for fuel assistance either because she believed she could get little or no assistance or misunderstood the impact of her failure to apply on her Food Stamp benefits. However, there is insufficient evidence to conclude that the petitioner's misunderstanding was based upon any directive from the Department not to apply for such benefits. The eligibility specialist's assertion that she does not discourage persons from applying for benefits is credible, particularly in light of the fact

that she does not administer the fuel program and is not familiar with all the eligibility rules and the fact that she was keenly aware that ineligibility for fuel could have a negative impact on the petitioner's eligibility for Food Stamps. In addition, her assertion is consistent with the information the petitioner acknowledges the worker did give her in April of 1998, which was to apply for fuel benefits.

Although the petitioner's testimony appears to be sincerely offered, the amount of time (two years) which has passed since the conversation, her inability to remember any other details about the conversation, and her hearing difficulty cast serious doubt on the accuracy of her testimony in relating what actually happened during that phone conversation. It is more likely from the conflicting but sincere testimony given by both parties that the petitioner misunderstood the information given to her by the specialist than that the specialist actually gave her the wrong information.

8. Even if the worker had given the petitioner misinformation in April of 1997, no evidence was offered that the petitioner failed to receive the subsequent June 1997 mailing sent to all food stamp recipients which clearly informed them that they could get fuel assistance even if heat was included in the rent, that failure to apply would negatively impact food stamp eligibility, and that timely applications could still be made.

ORDER

The decision of the Department denying the restoration of Food Stamp benefits is affirmed.

REASONS

The regulations governing the Food Stamp program provide that lost Food Stamp benefits can be restored under certain circumstances:

Restoration of Lost Benefits

a. Entitlement

1. The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency. . . . Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than 12 months prior to whichever of the following occurred first:
 - i. The date the State agency receives a request for restoration from a household; or
 - ii The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

. . .

F.S.M. 273.17(a)

The petitioner claimed on December 31, 1998, that she should have her benefits restored for the period from January 1, 1998 through October 31, 1998, because her benefits were lost due to "an error by the State agency." The burden is on the petitioner to show that an error was

committed. The petitioner has failed to meet that burden as is set forth in the factual findings above. It cannot be concluded on this evidence that the Department of Social Welfare made any error which would have led the petitioner not to apply for fuel assistance during the 1997-1998 fuel season, causing a subsequent loss of Food Stamps.

Therefore, the decision of the Department denying her claim is upheld.

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